**Court No.1**

**Civil Misc.writ Petition No.55 (T-B) of 2000.**
**(Old No. 291 of 1993)**

**Nazakat Ali Khan …… Petitioner.**

**Versus**

**Board of Revenue, U.P., Allahabad and four others. …… Respondents.**

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**Hon'ble P. C. Verma, J.**

This writ petition is directed against the judgment and order dated 20.10.1992 passed by the Board of Revenue in Revision No.79 of 1989-90 (Nainital). The said revision was filed under Section 33 of U.P.Act No.1 of 1951 by Sri Nazakat Ali Khan against the order dated 24.4.1990 of the Additional Commissioner, Kumaon Division, Nainital.

By order dated 24.4.1990, the Additional Commissioner, Kumaon Division, Nainital. Passed an order setting aside the exparte dismissal order of the appeal dated 12.10.1989 and allowing the substitution application filed by the respondents in the writ petition, namely, Abid Khan, Vahid Khan, Babbu Khan and others versus Smt. Munni Begum and others.

The Additional Commissioner, while restoring the appeal and allowing the substitution application recorded a finding that the legal heirship of deceased is disputed. Therefore, while restoring the appeal he directed the parties to appear before the S.D.M. for determination of legal heirs of deceased Smt. Munni Begum. The revisional court i.e. Board of Revenue has recorded a categorical finding that the application for

substitution of legal representatives of deceased Smt. Munni Begum was well within time. Since there has been two claimants for her property, therefore, the appellate authority rightly directed that the question is to be decided by the S.D.M. i.e. the trial Court.

Board of Revenue also has recorded a finding to the same effect.

Since both the courts below have recorded a categorical finding that the application was well within time and the question of legal heirs of Smt.Munni Begum also disputed in as much as there were other legal heirs apart from respondents. Thus, the revenue courts below rightly directed the S.D.M. concerned to decide the heirs of deceased Smt. Munni Begum. Therefore, I do not find any infirmity in the judgment dated 20.10.1992 passed by Board of Revenue.

Hence the petition is dismissed. No order as to costs.

02.8.2001
P. Singh

**(P. C. Verma, J.)**